CRIMINAL LAW — TRIAL — FAILURE TO ARRAIGN DEFENDANT. — The defendant was arraigned, entered a plea of not guilty to an information, was tried, and convicted. Upon appeal this conviction was reversed, and a new trial awarded. At retrial upon a different information, a motion to quash having been overruled, no formal arraignment and plea were had, but the defendant did not make specific objection at the time. The retrial resulted in a conviction, which was affirmed by the Supreme Court of Washington. *Held*, that the conviction was not without due process of law. *Garland* v. *Washington*, 34 Sup. Ct. 456.

This decision, that due process of law does not require that there be a formal arraignment and plea in order to sustain a conviction, is highly commendable, for it deprives the guilty defendant of another opportunity to evade justice by a technicality. The weight of authority, however, is clearly to the effect that ordinary criminal procedure requires this, on the ground that until arraignment and plea there is no issue to try. *People* v. *Corbett*, 28 Cal. 328; *State* v. *Fontenette*, 45 La. Ann. 902, 12 So. 937; *Crain* v. *United States*, 162 U. S. 625, (overruled by the principal case, at least as to the due process point). Or that any change is for the legislature and not for the courts. *State* v. *Vanhook*, 88 Mo. 105. But there is some authority in favor of the result of the principal case. *People* v. *Weeks*, 165 Mich. 362, 130 N. W. 697; *Hack* v. *State*, 141 Wis. 346, 124 N. W. 492. Whether these last cases would have been so decided in the absence of statutes allowing reversal only where the substantial rights of the party complaining have been affected, may be open to doubt. The rule in regard to misdemeanors is in accord with the principal case. *Allyn* v. *State*, 21 Neb. 593, 33 N. W. 212; *State* v. *Moore*, 30 S. C. 69, 8 S. E. 437. Furthermore, any objection that injustice was done to the accused in that he could not know with what he was charged until arraigned must be considered purely fictitious. The case marks an advance in criminal procedure.

DEEDS — DELIVERY IN ESCROW IRREVOCABLE THOUGH NO CONSIDERATION GIVEN. — The defendant, as a gift, deposited a deed in escrow to be delivered to the donee upon his performing a certain condition. Before performance, the defendant recovered the deed, and refused to deliver upon the plaintiff's tender of performance. *Held*, that the defendant will be compelled to deliver the deed. *Brown* v. *Allbright*, 161 S. W. 1036 (Ark.).

A deed deposited in escrow to be delivered to the purchaser on payment of the purchase price cannot be *revoked* by the vendor. *Cannon* v. *Handley*, 72 Cal. 133, 13 Pac. 315. This has been explained as a result of the purchaser's right to specific performance of the contract. See article by Professor Bigelow, 26 HARV. L. REV. 565, 568. But the doctrine seems to be applied even where there is not a specifically enforceable contract. *Davis* v. *Clark*, 58 Kan. 100, 48 Pac. 563. Delivery to the grantee will be considered as dating from the original delivery wherever this is necessary to support the validity of the deed. *Webster* v. *King's County Trust Co.*, 145 N. Y. 275, 39 N. E. 964. And on performance of the condition, no second delivery is necessary to the passing of title. *Hughes* v. *Thistlewood*, 40 Kan. 232, 19 Pac. 629; *Shirley* v. *Ayres*, 14 Ohio 307. Thus the doctrine would seem to rest wholly upon the ground that the deposit in escrow is a valid delivery, certain rights then vesting in the grantee, but that title will pass only on the stipulated contingency. See article by H. T. Tiffany, 14 COL. L. REV. 389, 394. On this ground it is held that a grantor cannot revoke an escrow deposited as a gift, the perfecting of which depends merely upon the lapse of time. *Stone* v. *Duvall*, 77 Ill. 475; *Bury* v. *Young*, 98 Cal. 446, 33 Pac. 338. Nevertheless, where it depends upon the donee's performance of a condition, the transaction has been treated as a mere revocable offer. *Hoig* v. *Adrian College*, 83 Ill. 267; see *Mechanics Nat. Bank* v. *Roughead*, 78 N. Y. Supp. 800, 808. It is submitted that these

cases fail to recognize the significance of a delivery in escrow, and that the principal case is correct.

EQUITY — JURISDICTION — APPOINTMENT OF RECEIVER IN AID OF JUDGMENT CREDITOR.— The plaintiff judgment creditor was unable to secure execution because the defendant had deposited his furniture in a warehouse, and the warehouseman refused to point out the property. The plaintiff asked that a receiver be appointed. *Held*, that the relief will not be granted. *Morgan* v. *Hart*, 49 L. J. 112 (Ct. App. 1914).

The principal case is undoubtedly right. The appointment of a receiver in cases of this sort is by way of equitable execution, and is only to be resorted to when the remedy for execution at law is inadequate. *Harris* v. *Beauchamp Bros.*, [1894] 1 Q. B. 801. The appointment of a receiver to reach jewelry worn by the debtor is within this principle, for the sheriff cannot levy. *Frazier* v. *Barnum*, 19 N. J. Eq. 316. But in the principal case there was only the practical difficulty of compelling the debtor or the warehouseman to point out the property. It would seem that this could have been accomplished by the statutory remedy of discovery. See RULES OF THE SUPREME COURT, ENGLAND, Order XLII, r. 32, 33.

EVIDENCE — DECLARATIONS CONCERNING INTENTION — POST-TESTAMENTARY DECLARATIONS OF TESTATOR ON ISSUE OF INTENT TO REVOKE. — A will and a codicil written on a single sheet were found among the papers of the testatrix. The signature to the codicil, with a part of the will, had been cut out. To prove that this had been done with intent to revoke the will as well as the codicil, the contestant offered several declarations, made by the testatrix after the execution of the will, during a period of several years prior to her death. *Held*, that the evidence is admissible. *Burton* v. *Wylde*, 103 N. E. 976 (Ill.).

The authorities generally agree that post-testamentary declarations are admissible to support or rebut the ordinary presumption that a lost or mutilated will in the testator's custody has been destroyed with intent to revoke. *Keen* v. *Keen*, L. R. 3 P. D. 105; *Patterson* v. *Hickey*, 32 Ga. 156; *Williams* v. *Miles*, 68 Neb. 463, 94 N. W. 705. Declarations of the testator which accompany the act of revocation are admissible as part of the *res gesta*. *Glass* v. *Scott*, 14 Colo. App. 377, 60 Pac. 186. But in the absence of a special exception to the hearsay rule for post-testamentary statements, declarations subsequent to revocation must depend upon the hearsay exception which admits contemporaneous expressions of a material state of mind. *Aldrich* v. *Aldrich*, 215 Mass. 164, 102 N. E. 487; *Mutual Life Insurance Co.* v. *Hillmon*, 145 U. S. 285; *Commonwealth* v. *Trefethen*, 157 Mass. 180, 31 N. E. 961. This exception should not extend to subsequent declarations offered to prove the act of revocation, for to permit inferences from present states of mind, made admissible by the exception, to past acts, would practically abrogate the hearsay rule, and is thus fundamentally objectionable. *Stevens* v. *Stevens*, 72 N. H. 360, 56 Atl. 916; *Boylan* v. *Meeker*, 28 N. J. L. 274. *Cf. Throckmorton* v. *Holt*, 180 U. S. 552. See 26 HARV. L. REV. 146. But when the issue is the intent accompanying a presumed or admitted physical act of destruction, the only inference is from present to past intent, and there is, therefore, no use made of the mental state exception to avoid the whole hearsay rule. Later declarations of intent to revoke should then be admissible where clearly relevant, that is, if there is strong proof of a continuing intention running back to the time of the act. *Managle* v. *Parker*, 75 N. H. 139, 71 Atl. 637; *Behrens* v. *Behrens*, 47 Oh. St. 323; *Collagan* v. *Burns*, 57 Me. 449. *Contra*, *In re Kennedy*, 167 N. Y. 163, 60 N. E. 442. In the principal case, the declarations covered a considerable period of time, so that it was not unreasonable to infer